

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

LA CIMA NEWPORT PARTNERS, LLC, §
Plaintiff, §

vs. §

LEXINGTON INSURANCE COMPANY, §
Defendant. §

CIVIL ACTION NO. 3:14-CV-00081-K

JURY DEMANDED

**PLAINTIFF'S RESPONSE IN OPPOSITION TO
DEFENDANT'S MOTION TO RECONSIDER**

TO THE HONORABLE ED KINKEADE:

COMES NOW Plaintiff, La Cima Newport Partners, LLC, and hereby files this Response in Opposition to Defendant's Motion to Reconsider the previous Court Order denying appraisal in this case. In support of all arguments set forth below, and for absolute purposes of fairness and justice, Plaintiff would show this Honorable Court as follows:

MOTION FOR RECONSIDERATION

1. From the outset, Plaintiff simply re-urges its previous arguments against Lexington Insurance Company's (hereinafter "Defendant") Motion to Compel.

2. On January 17, 2014, Defendant took on action indicative of a protocol now adhered to by essentially the entire Defense bar - the filing of a Motion to Compel Appraisal, despite the obvious unfair effects of the same. After Plaintiff filed its response, making the above (as well as other) arguments against such a delay tactic, the Court entered an Order denying the Motion to Compel Appraisal and the abatement of this matter, allowing the same proceed accordingly. Now Defendant has made the next move under the defense play book, which is to request a reconsideration of all previous arguments and legal conclusions it supplied,

all of which has already been considered by this Honorable Court.

3. To the extent that Defendant is hoping that Plaintiff will re-open the door to these old arguments by “taking the bait and re-arguing” this long resolved issue, Plaintiff simply refuses to do so. Each and every argument that was made by Plaintiff in its Response to Defendant’s Motion to Compel Appraisal and Motion to Abate, applies as well today, tomorrow and the next, and is hereby re-urged by Plaintiff in this matter. It is Plaintiff’s position that no additional response is required, as all issues of fact, fairness and equity remain today as when it filed its original response. Accordingly, Plaintiff rests on the same, and asks the Court to simply deny Defendant’s attempted second bite at the apple.

MOTION FOR FINDINGS OF FACT AND CONCLUSIONS OF LAW

4. In an interesting twist, Defendant essentially attacks the Court’s ruling, suggesting that the same is either misguided or misapplies to governing law in this matter. Plaintiff, while understanding that it is within the Court’s discretion to supply findings of fact and and conclusions of law, does not share in Defendant’s belief that the Court’s Order, or the reasoning behind the same, is misguided in anyway.

5. With the above said, Plaintiff takes no position regarding Defendant’s Motion for Findings of Fact and Conclusions of Law in this matter. However, Plaintiff would re-urge its previous position that any such finding of fact or conclusion of law should be issued in direct relation the Court’s previous order and would certainly ask that this Honorable Court maintain its position that appraisal and any abatement of this matter be denied.

THE VOSS LAW FIRM, P.C.

/s/ Scott G. Hunziker

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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that on April 1, 2014, a true and correct copy of the foregoing was served on all counsel of record, pursuant to Federal Rules of Civil Procedure 5(b), as follows:

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